

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 2:02 CR 16-1
(Maxwell)

AARON J. REDMON,

Defendant.

ORDER

It will be recalled that, on November 22, 2004, *pro se* Defendant Aaron J. Redmon, an inmate at FCI Gilmer, filed a Motion for Modification of an Imposed Term of Imprisonment & for Correction of an Unlawful/Ilegal Sentence In reference to Title 18 U.S.C. § 3582(c)(1)(i) & Fed.R.Civ.Pro. Rule 60(b)(2)(b)(6).

The case was referred to United States Magistrate Judge John S. Kaull for a report and recommendation on November 30, 2005.

It will further be recalled that, on May 25, 2006, United States Magistrate Judge John S. Kaull issued an Opinion/Report And Recommendation On Defendants' Motion For Modification Of Imposed Term Of Imprisonment And For Correction Of Unlawful/Ilegal Sentence, wherein he recommended that the Defendant's Motion for Modification of Imposed Term of Imprisonment under 18 U.S.C. § 3582(c) and for Correction of an Unlawful/Ilegal Sentence under Rule 60(b) of the Federal Rules of Civil Procedure be denied.

In his Opinion/Report And Recommendation On Defendants' Motion For Modification Of Imposed Term Of Imprisonment And For Correction Of Unlawful/Ilegal Sentence, Magistrate Judge Kaull provided the parties with ten (10) days from the date they were

served with a copy of said Opinion/Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

Finally, it will be recalled that, by Order entered June 7, 2006, the Court granted a Motion For Additional Time To File Objections filed by the Defendant on June 6, 2006, and granted the Defendant a thirty-day extension of time in which to file objections to Magistrate Judge Kaull's May 25, 2006, Opinion/Report And Recommendation.

The Court's review of the docket in the above-styled action reveals that, to date, no objections to Magistrate Judge Kaull's May 25, 2006, Opinion/Report And Recommendation have been filed. A Motion For Certificate Of Appealability was, however, filed by the Defendant on July 27, 2006. In said Motion, the Defendant asks the Court to issue a Certificate of Appealability with regard to the denial of his Motion for Modification of an Imposed Term of Imprisonment & for Correction of an Unlawful/Illegal Sentence In reference to Title 18 U.S.C. § 3582(c)(1)(i) & Fed.R.Civ.Pro. Rule 60(b)(2)(b)(6).

In light of the fact that this Court has not yet entered an Order either accepting or denying Magistrate Judge Kaull's May 25, 2006, Opinion/Report And Recommendation, there is not yet an appealable issue in the above-styled action. Accordingly, it is

ORDERED that the Defendant's Motion For Certificate Of Appealability (Docket No. 153) be, and the same is hereby, **DENIED** as premature.

Based on the fact that the Defendant did file a Motion For Certificate Of Appealability, it appears to the Court that the Defendant has decided not to file any objections to Magistrate Judge Kaull's May 25, 2006, Opinion/Report And Recommendation. Accordingly, upon

consideration of said Opinion/Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Opinion/Report And Recommendation entered by United States Magistrate Judge Kaull in the above-styled action on May 25, 2006 (Docket No. 139), be, and the same is hereby, **ACCEPTED** in totality. Consistent with said Opinion/Report And Recommendation, it is, accordingly,

ORDERED that the Defendant's Motion for Modification of Imposed Term of Imprisonment under 18 U.S.C. § 3582(c) and for Correction of an Unlawful/Illegal Sentence under Rule 60(b) of the Federal Rules of Civil Procedure (Docket No. 105), be, and the same is hereby, **DENIED**. It is further

ORDERED that the Clerk of Court shall send a copy of this Order to the *pro se* Defendant and to any counsel of record.

ENTER: August 3, 2006



United States District Judge

¹The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).